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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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27472	7590	01/10/2006	EXAMINER	
RANDALL B. BATEMAN BATEMAN IP LAW GROUP 8 EAST BROADWAY, SUITE 550 PO BOX 1319 SALT LAKE CITY, UT 84110			MCKANE, ELIZABETH L	
			ART UNIT	PAPER NUMBER
			1744	
DATE MAILED: 01/10/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/787,533

Applicant(s)

BRENCHLEY ET AL.

Examiner

Leigh McKane

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 36-78 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 45-47 is/are allowed.
- 6) ☒ Claim(s) 36-44 and 48-78 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Declaration under 37 CFR 1.131

1. The Declaration filed on 14 October 2005 under 37 CFR 1.131 has been considered but is ineffective to overcome the Nacouzi (U.S. Patent No. 6,354,710) reference.
2. The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Nacouzi reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897).

Applicant has provided no evidence that the instant invention was conceived of before September 6, 2000, the filing date of the Nacouzi patent. A declaration by the inventor to the effect that his or her invention was conceived or reduced to practice prior to the reference date, without a statement of facts demonstrating the correctness of this conclusion, is insufficient to satisfy 37 CFR 1.131. In fact, 37 CFR 1.131(b) requires that original exhibits of drawings or records, or photocopies thereof, accompany and form part of the affidavit or declaration or their absence satisfactorily explained. The affidavit or declaration and exhibits must clearly explain which facts or data applicant is relying on to show completion of his or her invention prior to the particular date.

Claim Rejections - 35 USC § 103

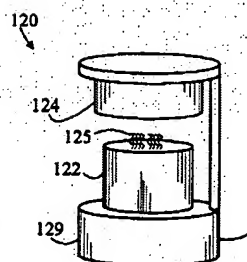
3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 36, 37, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nacouzi (U.S. 6,354,710) in view of Barnhart (U.S. 6,413,476).



Nacouzi discloses a method for emitting fragrance wherein a candle 122 having a container and wax is placed under a planar disk shaped heating element 124 which heats the wax to emit fragrance from the melted wax. See col.1, lines 39-40 and lines 43-44; col.3, lines 60-62. The heating element 124 of Nacouzi is located above the candle 122 and therefore the candle is not placed *on* the heating element.

Barnhart teaches a method for emitting fragrance from a candle, wherein a candle 100 having a container 3 and wax 102 is placed on a heating element 7 which heats the container of wax to emit fragrance from the melted wax. See Figure 3 below.

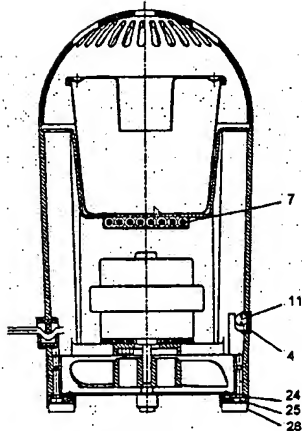


FIG 3

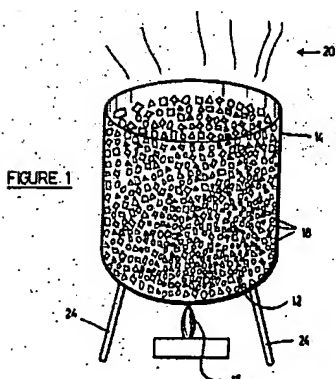
It would have been obvious to one of ordinary skill in the art to use the heating element 124 of Nacouzi to heat the candle from below, as disclosed by Barnhart, as being a viable alternate location for a heating element and/or in order to leave the top of the candle unobstructed to fragrance emission.

With respect to adding additional fragrance to the wax, although neither Barnhart nor Nacouzi suggest doing so, the amount of fragrance emitted by the candle directly affects the usefulness of the device. When

the fragrance is depleted the candle has no purpose, as it is wickless. Therefore, it is deemed obvious to add more fragrance as the fragrance is depleted, thereby extending the useful life of the device in much the same way a user adds additional fragrance oil to potpourri.

6. Claims 38 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nacouzi in view of Barnhart, as applied to claim 36, and further in view of Lam (GB 2199246).

With respect to claim 38, Nacouzi is silent with respect to adding additional candle wax



to the candle. Lam teaches an air freshener comprising a container 14 and wax 12. Fragrance is released from the wax by the application of heat.

See Abstract. Lam specifically discloses using individual pieces of wax to make a decorative air freshener. The air freshener may be provided in kit form including a bag of wax pieces. See page 3, lines 15-20. It would have been obvious to provide additional wax pieces in the manner of Lam,

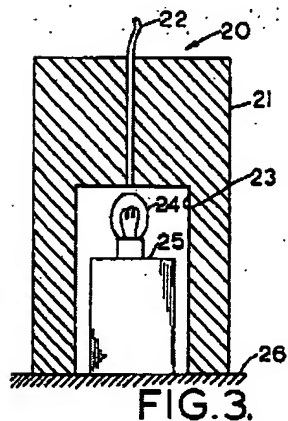
to add to the candle of Nacouzi in order to replenish evaporated fragrance and thereby, extend the useful life of the device.

As to claim 39, the container of Nacouzi is not disclosed to be glass/transparent.

However, Lam discloses a transparent jar for containing the wax so that as the wax is melted, the colors and shapes of the wax pieces can be viewed. Although not specifically enumerated, glass is deemed to be an obvious transparent material for the container as being one commonly used in candles for its heat-resistant properties. Moreover, it would have been obvious to employ a transparent, glass container in the device of Nacouzi in order to view the wax as it melts, as taught by Lam.

7. Claims 41-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nacouzi in view of Barnhart, as applied to claim 36, and further in view of Andeweg (U.S. 3,761,702).

While Nacouzi does teach that the heat source may be either a lamp or a heating element, Nacouzi fails to teach illuminating the candle wax *in addition to* heating the wax using a heating element, or a light attachment in the candle. Andeweg teaches an



internally illuminated candle comprising a channel formed through the center and containing a light attachment 25 and light bulb 24 with socket (unlabeled). The light attachment illuminates the candle. See Figure 3.

Moreover, Andeweg teaches providing a “plastic or glass sheath or solid inserts within the candle cavity” for diffusing the light from the bulb and for preventing melted wax from entering the cavity. See Figure 8,

sheath 63; col.1, lines 59-65; col.3, lines 15-18 and lines 29-38. Andeweg discloses that the internal light may include “flashing or other varied lighting, including color varied internal lighting, to provide infinitely variable illuminated candles beautiful as centerpiece candles.” See col.1, lines 8-21. It would have been obvious to one of ordinary skill in the art to modify the

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invention of Nacouzi, thereby including an internal light attachment for the candle, in order to illuminate the candle and achieve the “esthetically pleasing internal light” disclosed by Andeweg (Abstract).

8. Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nacouzi in view of Barnhart, as applied to claim 36, and further in view of Wightman et al. (U.S. 3,876,861).

The combination *supra* is silent with respect to an unheated retaining ring disposed around the disk shaped heating element. Wightman et al. teaches a heating device including a disk shaped heating element **20,30** having an unheated retaining ring **6** disposed around the heating element **20,30**. See Figures 1 and 4; col.1, lines 14-22.

It would have been obvious to use an unheated retaining ring in the combinations above in order to prevent unwanted movement of the candle while on the heating element.

9. Claims 48, 49, 51, 57-62, 64, 65, and 78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nacouzi in view of Andeweg.

Nacouzi teaches a candle heating unit including a housing **120** and at least one planar, disk shaped heating element **124** disposed on the housing **120** for heating a candle **122**. See Figure 4. While Nacouzi does teach that the heat source may be either a lamp or a heating element, Nacouzi fails to teach illuminating the candle wax *in addition to* heating the wax using a heating element, or a light attachment/socket adjacent or in the candle. Andeweg teaches an internally illuminated candle comprising a channel formed through the center and containing a light attachment **25** and light bulb **24** with socket (unlabeled). The light attachment illuminates the candle. See Figure 3. Moreover, Andeweg teaches providing a “plastic or glass sheath or solid inserts within the candle cavity” for diffusing the light from the bulb and for preventing

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melted wax from entering the cavity. See Figure 8, sheath 63; col.1, lines 59-65; col.3, lines 15-18 and lines 29-38. Andeweg discloses that the internal light may include “flashing or other varied lighting, including color varied internal lighting, to provide infinitely variable illuminated candles beautiful as centerpiece candles.” See col.1, lines 8-21. It would have been obvious to one of ordinary skill in the art to modify the invention Nacouzi and include an internal light attachment for the candle, in order to illuminate the candle and achieve the “esthetically pleasing internal light” disclosed by Andeweg (Abstract).

With respect to a control switch, Nacouzi discloses that the heat source 124 includes “an adjustable heat control 127”.

Furthermore, since Nacouzi already teaches that a light may be provided above the candle for heating purposes, it is deemed obvious to include an additional light above the candle for illumination thereof, in the manner of Andeweg.

With respect to adding additional fragrance to the melted wax, although Nacouzi fails to suggest doing so, the amount of fragrance emitted by the candle directly affects the usefulness of the device. When the fragrance is depleted the candle has no purpose, as it is wickless. Therefore, it is deemed obvious to add more fragrance as the fragrance is depleted, thereby extending the useful life of the device in much the same way a user adds additional fragrance oil to potpourri.

10. Claims 50, 52, and 54-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nacouzi in view of Andeweg, as applied to claims 48 and 51, and further in view of Barnhart.

The combination of Nacouzi with Andeweg as set forth *supra* teaches a candle heating

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unit having a housing 120, a heating element 124 located above the candle 122, and a light source located below/in the candle 122. The combination is silent with respect to a heating element below the candle such that the light socket is disposed in the center of the heating element.

Barnhart teaches a method for emitting fragrance from a candle, wherein a candle 100 having a container 3 and wax 102 is placed on a heating element 7 which heats the container of wax to emit fragrance from the melted wax. See Figure 3 below.

It would have been obvious to one of ordinary skill in the art to use the heating element 124 of Nacouzi to heat the candle from below, as disclosed by Barnhart, as being an viable alternate location for a heating element and/or in order to leave the top of the candle unobstructed to fragrance emission.

Barnhart teaches a method for emitting fragrance from a candle, wherein a candle 100 having a container 3 and wax 102 is placed on a heating element 7 which heats the container of wax to emit fragrance from the melted wax. See Figure 3 below.

It would have been obvious to one of ordinary skill in the art to use the heating element 124 of Nacouzi to heat the candle from below, as disclosed by Barnhart, as being an viable alternate location for a heating element and/or in order to leave the top of the candle unobstructed to fragrance emission.

11. Claim 53 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nacouzi in view of Andeweg, as applied to claim 48, and further in view of Wightman et al..

The combination *supra* is silent with respect to an unheated retaining ring disposed

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around the disk shaped heating element. Wightman et al. teaches a heating device including a disk shaped heating element 20,30 having an unheated retaining ring 6 disposed around the heating element 20,30. See Figures 1 and 4; col.1, lines 14-22.

It would have been obvious to use an unheated retaining ring in the combinations above in order to prevent unwanted movement of the candle while on the heating element.

12. Claim 63 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nacouzi in view of Andeweg as applied to claim 58 above, and further in view of Lam.

Nacouzi is silent with respect to adding additional candle wax to the candle. Lam teaches an air freshener comprising a container 14 and wax 12. Fragrance is released from the wax by the application of heat. See Abstract. Lam specifically discloses using individual pieces of wax to make a decorative air freshener. The air freshener may be provided in kit form including a bag of wax pieces. See page 3, lines 15-20. It would have been obvious to provide additional wax pieces in the manner of Lam, to add to the candle of Nacouzi in order to replenish evaporated fragrance and thereby, extend the useful life of the device.

13. Claims 66-70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nacouzi in view of Andeweg (U.S. 3,890,085, hereinafter 'Andeweg '085').

Nacouzi teaches a candle heating unit including a housing 120 and a generally planar and continuous heating element 124 disposed adjacent the surface of the housing for heating the candle, an unheated candle retaining member 129 disposed adjacent the heating element for holding a candle thereon. See Figure 4. While Nacouzi does teach that the heat source may be either a lamp or a heating element, Nacouzi fails to teach or a lighting means for illuminating the candle. Andeweg '085 teaches an internally illuminated candle comprising a channel formed

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through the center and containing a light attachment **25** and light bulb **24** with socket (unlabeled). The light attachment illuminates the candle. See Figure 3. Moreover, Andeweg '085 teaches providing a "plastic, glass or other inserts molded into the candle structure" for diffusing the light from the bulb and for preventing melted wax from entering the cavity. See Figure 8, sheath **63**; col.1, lines 65-66; col.3, line 63 to col.4, line 21. Andeweg '085 discloses that the internal light may include "flashing or other varied lighting, including color varied internal lighting, to provide infinitely variable illuminated candles beautiful as centerpiece candles." See col.1, lines 20-26. It would have been obvious to one of ordinary skill in the art to modify the invention Nacouzi and include an internal light attachment for the candle, in order to illuminate the candle and achieve the "esthetically pleasing appearance" disclosed by Andeweg (Abstract).

Although the candle retaining member **129** of Nacouzi does not have an annular ring. Andeweg '085 evidences a candle retaining member **157** having an annular ring **158** disclosed to "receive and position the candle structure" (col.6, lines 47-50 and Figure 19). For the same reason, it would have been obvious to provide an annular ring on the candle retaining member **129** of Nacouzi.

14. Claims 71-75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nacouzi in view of Barnhart and Lam.

Nacouzi discloses a method for emitting fragrance wherein a candle **122** having a container and wax is placed under a planar disk shaped heating element **124** which heats the wax to emit fragrance from the melted wax. See col.1, lines 39-40 and lines 43-44; col.3, lines 60-62. The heating element **124** of Nacouzi is located above the candle **122** and therefore the candle is

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not placed *on* the heating element. Moreover, Nacouzi is silent as to whether the container is transparent.

Barnhart teaches a method for emitting fragrance from a candle, wherein a candle 100 having a container 3 and wax 102 is placed on a heating element 7 which heats the container of wax to emit fragrance from the melted wax. See Figure 3 below.

It would have been obvious to one of ordinary skill in the art to use the heating element 124 of Nacouzi to heat the candle from below, as disclosed by Barnhart, as being an viable alternate location for a heating element and/or in order to leave the top of the candle unobstructed to fragrance emission.

Lam teaches an air freshener comprising a container 14 and wax 12. Fragrance is released from the wax by the application of heat. See Abstract. Lam discloses a transparent jar for containing wax so that as the wax is melted, the colors and shapes of the wax pieces can be viewed. Although not specifically enumerated, glass is deemed to be an obvious transparent material for the container as being one commonly used in candles for its heat-resistant properties. Moreover, it would have been obvious to employ a transparent, glass container in the device of Nacouzi in order to view the wax as it melts, as taught by Lam.

With respect to adding additional fragrance to the wax, although Nacouzi does not suggest doing so, the amount of fragrance emitted by the candle directly affects the usefulness of the device. When the fragrance is depleted the candle has no purpose, as it is wickless. Therefore, it is deemed obvious to add more fragrance as the fragrance is depleted, thereby extending the useful life of the device in much the same way a user adds additional fragrance oil to potpourri.

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15. Claims 76 and 77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nacouzi in view of Barnhart and Lam, as applied to claim 71, and further in view of Andeweg (U.S. 3,761,702).

While the combination of Nacouzi with Barnhart teaches a candle heating unit comprising a housing and a planar, disk shaped heating element, neither Barnhart nor Nacouzi teach illuminating the candle wax or a light attachment adjacent or in the candle. Andeweg teaches an internally illuminated candle comprising a channel formed through the center and containing a light attachment **25** and light bulb **24** with socket (unlabeled). The light attachment illuminates the candle. See Figure 3. Moreover, Andeweg '085 teaches providing a "plastic, glass or other inserts molded into the candle structure" for diffusing the light from the bulb and for preventing melted wax from entering the cavity. See Figure 8, sheath **63**; col.1, lines 65-66; col.3, line 63 to col.4, line 21. Andeweg discloses that the internal light may include "flashing or other varied lighting, including color varied internal lighting, to provide infinitely variable illuminated candles beautiful as centerpiece candles." See col.1, lines 8-21. It would have been obvious to one of ordinary skill in the art to modify the invention of Nacouzi, thereby including an internal light attachment for the candles, in order to illuminate the candle and achieve the "esthetically pleasing internal light" disclosed by Andeweg (Abstract).

Allowable Subject Matter

16. Claims 45-47 are allowed.

17. The following is an examiner's statement of reasons for allowance: The prior art of record, while providing motivation for constructing a candle having a channel therethrough (e.g.

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Andeweg), fails to teach or suggest a channel comprising container walls defining the channel and configured for preventing molten wax from passing therethrough and wherein the candle wax lacks a wick. The candle of Andeweg lacks a container and when combined with Nacouzi, only provides motivation to provide a sheath to form the channel. There is no motivation to form the channel from the container of Nacouzi.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Response to Arguments

18. Applicant's arguments filed 14 October 2005 have been fully considered but they are not persuasive. However, with respect to the combination using Barnhart as the primary reference in combination with Nacouzi, Applicant's arguments are persuasive and this rejection has been withdrawn. The rejections using Nacouzi as the primary reference are maintained.

19. With respect to the Andeweg reference, Applicant argues that "if the candle was placed on a heating surface to thereby melt the candle, the light cavity would be ruined and a mess of wax and electrical components would result." However, the Examiner points to sheath 63, disclosed by Andeweg to prevent this very occurrence.

Conclusion

20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

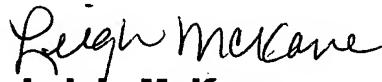
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leigh McKane whose telephone number is 571-272-1275. The examiner can normally be reached on Monday-Thursday (5:30 am-2:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Leigh McKane
Primary Examiner
Art Unit 1744

elm
9 January 2006